

L-99-18
December 3, 1999

TO : Wayne J. Scharnak
Chief, Employee Service/Training Center

FROM : Steven A. Bartholow
General Counsel

SUBJECT: CSX Voluntary Early Retirement and Voluntary
Separation Program

This is in response to your inquiry as to the what effect, if any, participation in the CSX Voluntary Separation Program would have on the participant's entitlement to a disability annuity.

Under the CSX Voluntary Separation Program, an employee who is receiving a disability annuity may elect to receive a lump-sum separation payment and relinquish his or her seniority rights. Section 2(e)(2) of the Railroad Retirement Act provides that before an annuity may be paid an individual must relinquish his or her rights to return to employment; however, this requirement does not apply to the receipt of a disability annuity under the Act. Section 2(e)(3) of the Act provides that no annuity shall be paid in any month an annuitant renders compensated service to an employer. Section 2ll.10 of the Board's regulations provides that a separation payment is credible compensation, except that no amount shall be creditable after the employee has terminated his or her employment relationship. Revenue Ruling 90-72, 1990-2 C.B. 211, provides that lump-sum payments paid to terminated employees not otherwise tied to receipt of unemployment benefits are compensation for purposes of employment taxes.

It follows from the above that a disability annuitant who elects a separation payment in return for relinquishment of employment rights receives creditable compensation for the month of election. Under section 2(e)(2) of the Act no annuity would be payable in that month.